

Green, LindaE

From: Stilp, Mark
Sent: Wednesday, February 01, 2017 6:35 PM
To: FOIA HQ
Subject: Touhy/Subpoena for FOIAonline
Attachments: Subpoena_Duces_Tecum_Flynn_v_Gavilan_Peak_Estates.pdf

Importance: High

Hi FOIA HQ-

Will you please enter the attached Subpoena as a FOIA request and assign the request directly to me (Mark Stilp in OGC-GLO).

Thanks.

-Mark Stilp

Mark Stilp | Attorney-Adviser | Office of General Counsel | U.S. Environmental Protection Agency | 1200 Pennsylvania Ave.
NW | Washington, DC 20460 | mail code: 2377A | office: 202.564.4845 | cell: 202.839.1889

SUBPOENA

Superior Court of the District of Columbia
CIVIL DIVISION



Check One:

- ☒ Civil Actions Branch
 500 Indiana Ave., N.W.
 Room 5000
 Washington, D.C. 20001
 Telephone: (202) 879-1133
- ☐ Landlord & Tenant Branch
 510 4th Street, N.W.
 Room 110
 Washington, D.C. 20001
 Telephone: (202) 879-4879
- ☐ Small Claims & Conciliation Branch
 510 4th Street, N.W.,
 Room 119
 Washington, D.C. 20001
 Telephone: (202) 879-1120

SUBPOENA FOR A CIVIL CASE

GAVILAN PEAK ESTATES, LLC, an Arizona LLC

Plaintiff

v.

JOHN R. FLYNN, TRSTE OF AMERICAN SECURITY INVESTMENTS, et al.

Defendant

To: U.S. ENVIRONMENTAL PROTECTION AGENCY

CASE NUMBER: **17-0000268**

Assigned Judge: _____

Calendar Number: _____

☐ Check box if medical records are being requested

☐ YOU ARE COMMANDED to appear in this Court at the place, date, and time specified below to testify in the above case.

COURTROOM AND ADDRESS	DATE	TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

METHOD FOR RECORDING TESTIMONY:

PLACE OF DEPOSITION	DATE	TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. SCR-CIV 30(b)(6).

☒ YOU ARE COMMANDED to produce and permit inspection, copying, testing or sampling of the following documents, electronically stored information or tangible things at the place, date, and time specified below

DOCUMENTS, ELECTRONICALLY STORED INFORMATION OR TANGIBLE THINGS:

See Exhibit A of Arizona Subpoena Duces Tecum, attached hereto

PLACE OF PRODUCTION	DATE	TIME
Torri's Legal Services, 2100 M Street NW 170-252, Washington DC 20037	February 7, 2017	10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date, and time specified below.

PREMISES	DATE	TIME

ISSUING PERSON'S SIGNATURE AND TITLE (indicate if attorney for plaintiff or defendant)

DATE

1/17/2017

ISSUING PERSON'S NAME, ADDRESS AND PHONE NUMBER

Jeffrey D. Harris, Esq., Titus Brueckner & Levine PLC
 8355 E. Hartford Dr., Suite 200
 Scottsdale, AZ 85255

480-483-9600

J. Colaire Simpson

Superior Court of the District of Columbia
 Civil Division

500 Indiana Avenue, N.W.

Washington, D.C. 20001

c-d SUPERIOR COURT RULES OF CIVIL PROCEDURE (SEE THE REVERSE SIDE)

WHITE - FOR RETURN OF SERVICE

YELLOW - FOR SERVICE

JAN 23 2017

17-0000268-2



10455120

Case Number: **17-0000268**

Court Date: _____

Authorization as required by D.C. Code §14-307 and Brown v. U.S., 567 A.2d 426 (D.C. 1989), is hereby given for issuance of a subpoena for medical records concerning a person who has not consented to disclosure of the records and has not waived the privilege related to such records.

JUDGE**PROOF OF SERVICE**

Served	Date	Time	Place
Served on (Print Name)			Title

MANNER OF SERVICE (attach the return receipt if service was made by registered or certified mail)

I served the subpoena by delivering a copy to the named person as follows:

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the District of Columbia that I am at least 18 years of age and not a party to the above entitled case and that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

Date

Signature of Server_____
Address of Server**RULE 45 SUPERIOR COURT RULES OF CIVIL PROCEDURE, Sections C&D:****(c) PROTECTING A PERSON SUBJECT TO SUBPOENA.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or an attorney responsible for the issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction, which may include lost earnings and a reasonable attorney's fees on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for deposition, hearing or trial.

(B) *Objections.* A person commanded to produce documents, electronically stored information, or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If objection is made, the following rules apply:

(i) At any time, notice to the commanded person, the serving party may move the court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court must quash or modify a subpoena that:

(i) fails to allow reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 25 miles from where that person resides, is employed, or regularly transacts business in person except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place to the place of trial; or

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 25 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) **DUTIES IN RESPONDING TO A SUBPOENA.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored

~~documents~~ *information.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation materials must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

ORIGINAL

FILED
CIVIL ACTIONS BRANCH

JAN 17 2017

Superior Court
of the District of Columbia
Washington, D.C.

17-0000268

1 Jon A. Titus, #006501
2 Larry J. Crown, #013133
3 Jeffrey D. Harris, #031136
4 **TITUS BRUECKNER & LEVINE PLC**
5 8355 E. Hartford Drive, Suite 200
6 Scottsdale, Arizona 85255
7 480-483-9600
8 jtitus@tbl-law.com
9 lcrown@tbl-law.com
10 jharris@tbl-law.com
11 *Attorneys for Plaintiff/Counterdefendant*

12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

13 **IN AND FOR THE COUNTY OF MARICOPA**

14 **GAVILAN PEAK ESTATES, LLC, an**
15 **Arizona limited liability company,**

16 **Plaintiff,**

17 **v.**

18 **JOHN R. FLYNN, TRUSTEE OF**
19 **AMERICAN SECURITY INVESTMENTS,**
20 **an Irrevocable Trust; WENDY B. BERNS;**
21 **JOHN and JANE DOES I-X; ABC**
22 **CORPORATIONS I-X, XYZ**
23 **PARTNERSHIPS I-X AND DEF LLCs, I-X,**

24 **Defendants.**

No. CV2015-054086

**SUBPOENA DUCES TECUM TO
UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY**

(Assigned to the Honorable Dawn Bergin)

25 **JOHN R. FLYNN, TRUSTEE OF**
26 **AMERICAN SECURITY INVESTMENTS,**
an Irrevocable Trust; WENDY B. BERNS, a
married woman,

Counterclaimants,

v.

GAVILAN PEAK ESTATES, LLC, an
Arizona limited liability company,

Counterdefendant.



1 THE STATE OF ARIZONA TO:

Administrator
Gina McCarthy
United States Environmental Protection
Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

2
3
4
5 YOU ARE COMMANDED to produce and permit inspection, copying, testing, or
6 sampling of the following designated documents, electronically stored information, recorded
7 data, and tangible things:

8 See Exhibit A, attached hereto.

9 PLACE OF PRODUCTION:

TITUS BRUECKNER & LEVINE PLC
8355 E. Hartford Drive, Suite 200
Scottsdale, Arizona 85255
(480) 483 9600

11 DATE AND TIME OF PRODUCTION:

February 7, 2017 at 10:00 a.m.

12
13
14 You have been subpoenaed by the above-named Plaintiff, whose attorney's name,
15 address, and telephone number are:

16 Jeffrey D. Harris, Esq.
17 TITUS BRUECKNER & LEVINE PLC
18 8355 E. Hartford Drive, Suite 200
19 Scottsdale, Arizona 85255
(480) 483-9600
jharris@tbl-law.com

20 YOUR DUTIES IN RESPONDING TO THIS SUBPOENA

21 *Production of Documentary Evidence of Inspection of Premises.* If this subpoena
22 commands you to produce and permit inspection, copying, testing, or sampling of designated
23 documents, electronically stored information, or tangible things, you must make the items
24 available at the place, date, and time designated in this subpoena, and in the case of
25 electronically stored information, in the form or forms requested, unless you provide a good
26 faith written objection to the party or attorney who served the subpoena. See Rule 45(c)(5) of
the Arizona Rules of Civil Procedure. See also "Your Right to Object to This Subpoena"
section below. Similarly, if this subpoena commands you to make certain premises available for
inspection, you must make the designated premises available for inspection on the date and time

1 designated in this subpoena unless you provide a good faith written objection to the party or
2 attorney who served the subpoena. *See* Rule 45(c)(5) of the Arizona Rules of Civil Procedure.
3 *See also* "Your Right to Object to This Subpoena" section below.

4 You should note that a command to produce certain designated materials, or to permit the
5 inspection of premises, *may* be combined with a command to appear at trial, hearing, or
6 deposition. *See* Rule 45(b)(2) of the Arizona Rules of Civil Procedure. You do not, however,
7 need to appear in person at the place of production or inspection unless the subpoena *also* states
8 that you must appear for and give testimony at a hearing, trial, or deposition. *See* Rule 45(c)(3)
9 of the Arizona Rules of Civil Procedure.

10 If the subpoena commands you to produce documents, you have the duty to produce the
11 designated documents as they are kept by you in the usual course of business, or you may
12 organize the documents and label them to correspond with the categories set forth in the
13 subpoena. *See* Rule 45(c)(4) of the Arizona Rules of Civil Procedure.

14 ***Attendance at a Trial.*** If this subpoena commands you to appear at a trial, you must
15 appear at the place, date and time designated in the subpoena unless you file a timely motion
16 with the court and the court quashes or modifies the subpoena. *See* Rule 45(b)(5) and Rule
17 45(e)(2) of the Arizona Rules of Civil Procedure. *See also* "Your Right To Object To This
18 Subpoena" section below. Unless a court orders otherwise, you are required to travel to any part
19 of the state to attend and give testimony at a trial. *See* Rule 45(b)(3)(A) of the Arizona Rules of
20 Civil Procedure.

21 ***Attendance at a Hearing or Deposition.*** If this subpoena commands you to appear at a
22 hearing or deposition, you must appear at the place, date and time designated in this subpoena
23 unless either: (1) you file a timely motion with the court and the court quashes or modifies the
24 subpoena; or (2) you are not a party or a party's officer and this subpoena commands you to
25 travel to a place other than: (a) the county in which you reside or you transact business in
26 person; or (b) the county in which you were served with the subpoena or within forty (40) miles
from the place of service; or (c) such other convenient place fixed by a court order. *See* Rule
45(b)(3)(B) and Rule 45(e)(2)(A)(ii) of the Arizona Rules of Civil Procedure. *See also* "Your
Right to Object to This Subpoena" section below.

23 YOUR RIGHT TO OBJECT TO THIS SUBPOENA

24 ***Generally.*** If you have concerns or questions about this subpoena, you should first
25 contact the party or attorney who served the subpoena. The party or attorney serving the
26 subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on
you. The Superior Court enforces this duty and may impose sanctions upon the party or

1 attorney serving the subpoena if this duty is breached. *See* Rule 45(e)(1) of the Arizona Rules of
2 Civil Procedure.

3 ***Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or***
4 ***Deposition.*** If you wish to object to a subpoena commanding your appearance at a hearing, trial
5 or deposition, you must file a motion to quash or modify the subpoena with the court to obtain a
6 court order excusing you from complying with this subpoena. *See* Rules 45(b)(5) and 45(e)(2)
7 of the Arizona Rules of Civil Procedure. The motion must be filed in the superior court of the
8 county in which the case is pending or in the superior court of the county from which the
9 subpoena was issued. *See* Rule 45(e)(2)(A) and (B) of the Arizona Rules of Civil Procedure.
10 The motion must be filed before the time specified for compliance or within 14 days after the
11 subpoena is served, whichever is earlier. *See* Rule 45(e)(2)(D) of the Arizona Rules of Civil
12 Procedure. You must send a copy of any motion to quash or modify the subpoena to the party
13 or attorney who served the subpoena. *See* Rules 45(e)(2)(E) of the Arizona Rules of Civil
14 Procedure.

11 The court *must* quash or modify a subpoena:

12 (1) if the subpoena does not provide a reasonable time for compliance;

13 (2) unless the subpoena commands your attendance at a trial, if you are not a party or a
14 party's officer and if the subpoena commands you to travel to a place other than: (a) the county
15 in which you reside or transact business in person; (b) the county in which you were served with
16 a subpoena, or within forty (40) miles from the place of service; or (c) such other convenient
17 place fixed by a court order; or

18 (3) if the subpoena requires disclosure of privileged or other protected matter, if no
19 exception or waiver applies; or

20 (4) if the subpoena subjects you to undue burden.

21 *See* Rule 45(e)(2)(A) of the Arizona Rules of Civil Procedure.

22 The court *may* quash or modify a subpoena:

23 (1) if the subpoena requires you to disclose a trade secret or other confidential research,
24 development or commercial information;

25 (2) if you are an unretained expert and the subpoena requires you to disclose your opinion
26 or information resulting from your study that you have not been requested by any party to give
on matters that are specific to the dispute;

1
2 (3) if you are not a party or a party's officer and the subpoena would require you to incur
3 substantial travel expense; or

4 (4) if the court determines that justice requires the subpoena to be quashed or modified.

5 See Rule 45(e)(2)(B) of the Arizona Rules of Civil Procedure.

6 In these last four circumstances, a court may, instead of quashing or modifying a
7 subpoena, order your appearance or order the production of material under specified conditions
8 if: (1) the serving party or attorney shows a substantial need for the testimony or material that
9 cannot be otherwise met without undue hardship; and (2) if your travel expenses or the expenses
10 resulting from the production are at issue, the court ensures that you will be reasonably
11 compensated. See Rule 45(e)(2)(C) of the Arizona Rules of Civil Procedure.

12 ***Procedure for Objecting to Subpoena for Production of Documentary Evidence.*** If you
13 wish to object to a subpoena commanding you to produce documents, electronically stored
14 information, or tangible items, or to permit the inspection of premises, you may send a good
15 faith written objection to the party or attorney serving the subpoena that objects to: (1)
16 producing, inspecting, copying, testing, or sampling any or all of the materials designated in the
17 subpoena; (2) inspecting the premises; or (3) producing electronically stored information in the
18 form or forms requested. You must send your written objection to the party or attorney who
19 served the subpoena before the time specified for compliance or within 14 days after the
20 subpoena is served, whichever is earlier. See Rule 45(c)(5)(A)(ii) of the Arizona Rules of Civil
21 Procedure.

22 If you object because you claim the information requested is privileged, protected, or
23 subject to protection as trial preparation material, you must express the objection clearly, and
24 support each objection with a description of the nature of the document, communication, or item
25 not produced so that the demanding party can contest the claim. See Rule 45(c)(5)(C) of the
26 Arizona Rules of Civil Procedure.

27 If you object to the subpoena in writing, you do not need to comply with the subpoena until a
28 court orders you to do so. It will be up to the party or attorney serving the subpoena to first
29 personally consult with you and engage in good faith efforts to resolve your objection and, if the
30 objection cannot be resolved, to seek an order from the court to compel you to provide the
31 documents or inspection requested, after providing notice to you. See Rule 45(c)(5)(B) of the
32 Arizona Rules of Civil Procedure.

33 If you are not a party to the litigation, or a party's officer, the court will issue an order to
34 protect you from any significant expense resulting from the inspection and copying commanded.

1 See Rule 45(c)(6)(B) of the Arizona Rules of Civil Procedure.

2 Instead of sending a written objection to the party or attorney who served the subpoena,
3 you also have the option of raising your objections in a motion to quash or modify the subpoena.
4 See Rule 45(e)(2) of the Arizona Rules of Civil Procedure. The procedure and grounds for
5 doing so are described in the section above entitled "Procedure for Objecting to a Subpoena for
Attendance at a Hearing, Trial, or Deposition."

6 If the subpoena *also* commands your attendance at a hearing, trial, or deposition, sending
7 a written objection to the party or attorney who served the subpoena does not suspend or modify
8 your obligation to attend and give testimony at the date, time, and place specified in the
9 subpoena. See Rule 45(c)(5)(A)(iii) of the Arizona Rules of Civil Procedure. If you wish to
10 object to the portion of this subpoena requiring your attendance at a hearing, trial, or deposition,
11 you must file a motion to quash or modify the subpoena as described in the section above
entitled "Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial, or
Deposition." See Rule 45 (b)(5) and 45(c)(5)(iii) of the Arizona Rules of Civil Procedure.

12 ADA NOTIFICATION

13 Requests for reasonable accommodation for persons with disabilities must be made to the
14 court by parties at least 3 working days in advance of a scheduled court proceeding.

15 **YOU ARE HEREBY NOTIFIED THAT ANY FAILURE TO OBEY THIS**
16 **SUBPOENA WITHOUT ADEQUATE EXCUSE MAY BE DEEMED A CONTEMPT OF**
17 **THIS COURT.**

18 **JAN 13 2017**

19 SIGNED AND SEALED this date: _____



20 By **MICHAEL K. IFANES, CLERK**

21 Clerk

22 By _____

23 *F. Azadeh*
24 Deputy Clerk
25 **F. Azadeh**

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EXHIBIT A

All documents, evidence, and other things, in any format whatsoever (including, but not limited to, electronic, audio files, video files, photographs, written, typewritten, facsimile, handwritten, transcribed, short-hand, stenographic or otherwise) in regard to any and all reports made on, and investigations of or directly connected to, the property located at 46430 N. 27th Avenue in New River, Arizona 85087, otherwise formerly referred to at times as the "StarFlash Ranch" and the "Byers Bomb Site" (hereinafter referred to as the "Property"), including, but not limited to, the activities of any and all of the following people and entities at the Property:

Charles M. Byers; Wendy Berns; Accuracy Systems, Inc.; Accuracy Systems Ordnance Corp; Paul Krznarich; Rock Production Technologies; Precision Ordnance Products, Inc.; Michael Roe; and/or Steven Lane.

The documents, evidence, and other things sought include, but are not limited to, all communications with any and all representatives and/or attorneys of or for the people and entities previously mentioned, correspondence, reports, updates, emails, text messages, notes, diaries, logs, memoranda, invoices, billings, phone notes, case notes, file notes, and anything else related to the reports made on, and investigation(s) of or directly connected to, the Property that is the subject of the above-referenced litigation.

In the event anything is being withheld pursuant to the attorney-client privilege (or any other claimed privilege), please prepare a privilege log in compliance with Ariz.R.Civ.Proc. 26.1(f).